

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**TENTATIVE**

**ORDER NO. R9-2003-0301**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY  
AGAINST  
PIONEER BUILDERS, INC.  
NONCOMPLIANCE WITH  
STATE BOARD ORDER NO. 99-08-DWQ,  
CLEANUP AND ABATEMENT ORDER NO. R9-2003-158,  
AND  
BASIN PLAN WASTE DISCHARGE PROHIBITION NO. 1**

The California Regional Water Quality Control Board, San Diego Region (Regional Board), having held a public hearing on August 13, 2003, to hear evidence and comments on the allegations contained in Complaint No. R9-2003-270, dated June 12, 2003, after determining the allegations contained in the Complaint to be true, and on the recommendation for administrative assessment of Civil Liability in the amount of \$135,150, finds as follows:

1. Pioneer Builders, Inc. operates a two-acre construction site located at 35262 and 35272 Camino Capistrano in the Capistrano Beach community of the City of Dana Point. Construction at the site commenced on or about January 22, 2003.
2. The construction site is subject to the requirements of State Water Resources Control Board Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity* commencing on March 10, 2003, the date construction sites larger than one acre were required to obtain coverage through the submittal of a Notice of Intent.
3. On April 11, 2003 the Executive Officer issued Cleanup and Abatement Order No. R9-2003-158 to Pioneer Builders, Inc. The order required Pioneer Builders, Inc. to abate the effects of the destruction of the wetland through on-site and off-site mitigation. Cleanup and Abatement Order No. R9-2003-158 was modified by the Regional Board at a public hearing on May 14, 2003.
4. From January 24, 2003 through March 9, 2003, Pioneer Builders, Inc. caused or threatened to cause a condition of pollution, contamination, or nuisance to waters of the State in violation of Waste Discharge Prohibition No. 1 of the Water Quality Control Plan, San Diego Basin, Region 9 (Basin Plan) by depositing fill

- material in a wetland designated as jurisdictional waters of the United States by the United States Army Corps of Engineers.
5. Between March 10, 2003 and April 10, 2003 Pioneer Builders, Inc. failed to develop and implement adequate erosion and sediment control best management practices in violation of Special Provisions for Construction Activity C.2 of Order No. 99-08-DWQ which allowed sediment laden storm water to be discharged off-site during storm events.
  6. Pioneer Builders, Inc. failed to submit a complete section 401 Water Quality Certification application from April 18, 2003 through May 19, 2003 in violation of Directive No. 5 of Cleanup and Abatement Order No. R9-2003-158.
  7. Pioneer Builders, Inc. failed to file a Notice of Intent for coverage under Order No. 99-08-DWQ from March 10, 2003 through April 9, 2003 in violation of California Water Code section 13373 and Order No. 99-08-DWQ. The Notice of Intent was recorded by the State Water Resources Control Board on April 10, 2003.
  8. Consideration of the factors addressed in *Technical Analysis, Proposed Administrative Civil Liability Contained in Complaint No. R9-2003-270, Pioneer Builders, Inc., Noncompliance with Order No. 99-08-DWQ, Cleanup and Abatement Order No. R9-2003-158, and Water Quality Control Plan, San Diego Basin (9) (Basin Plan) Waste Discharge Prohibition No. 1*, supports the assessment of civil liability in the amount of \$135,150 based on the following:
    - a. Pioneer Builders, Inc. caused or threatened to cause a condition of pollution, contamination and nuisance in the on-site wetland in violation of Basin Plan Waste Discharge Prohibition No. 1 from January 24, 2003 through March 9, 2003, for a total of 45 day of violation, at one thousand five hundred dollars per day (\$1,500), for a total assessment of sixty-seven thousand five hundred dollars (\$67,500).
    - b. Pioneer Builders, Inc. failed to develop and implement adequate erosion and sediment control best management practices in violation of Special Provisions for Construction Activity C.2 of Order No. 99-08-DWQ from March 10, 2003 through April 10, 2003, for a total of 32 days of violation, at one thousand dollars per day (\$1,000) for a total assessment of thirty-two thousand dollars (\$32,000).
    - c. Pioneer Builders, Inc. failed to submit a complete section 401 Water Quality Certification application in violation of Directive No. 5 of Cleanup and Abatement Order No. R9-2003-158 from April 19, 2003 through March 19, 2003, for a total of 31 days of violation, at one thousand dollars per day (\$1,000) for a total assessment of thirty one

thousand dollars (\$31,000).

- d. Pioneer Builders failed to file a Notice of Intent for coverage under Order No. 99-08-DWQ from March 10, 2003 through April 9, 2003 for a total of 31 days of violation, at one hundred and fifty dollars per day (\$150) for a total of four thousand six hundred fifty dollars (\$4,650).
9. The Regional Board incurred costs totaling \$16,200 which includes field investigations, preparation of enforcement documents, meeting attendance and public hearings.
10. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.) in accordance with Section 15308, Chapter 3, Title 14, of the California Code of Regulations.

**IT IS HEREBY ORDERED**, that civil liability is imposed on Pioneer Builders, Inc. in the amount of one hundred thirty five thousand one hundred fifty dollars (\$135,150).

*I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on November 12, 2003.*

TENTATIVE

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JOHN H. ROBERTUS  
Executive Officer